Supreme Court, U.S.
FILED

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Case No. 1 Docket No.

Case No. 2 Docket No.

In the United States Supreme Court

Ashok Kashelkar Case No. 1
Petitioner

-against-

Harold Y. MacCartney, Jr et al
Respondents

ASHOK KASHELKAR Case No. 2
Petitioner

-against-

RUBIN & ROTHMAN ; et al
Respondents

On Petition For Writ of Certiorari
to the United States Court for the Second Circuit

Joint Petition - Conforming to Rule 12.4 Rule,14 & Rule 20.1

Petitioner - Ashok Kashelkar - Pro Se
6 Innington Court,
Spring Valley, NY 10977
Tel. (845) 426 2902

49PP

QUESTIONS PRESENTED

1 Do Common Law Decisions and Rules "invalidate, vitiate and \ or supersede U. S. Constitution and Laws of United States" ? The answer must be "NO".

A If not, then "Judicially created Immunity or Privilege" for *any person* [under ANY principle, vehicle or name], to be accountable in Civil litigations; that is not *conforming or pursuant* to or *supported by* any U. S. statutes or any provisions of the United States Constitution, *be declared Unconstitutional.*

B Do the "state law" and \ or "Common law" concepts such as Collateral Estoppel, Issue Preclusion or Claim Preclusion used in "Rooker Feldman"doctrine [developed and arising out of State Law or Regulation] or common law; when applied to litigant's Civil Claims under Federal Statutes, violate the U. S. Constitution ?

C Would this Court accept to conclusively resolve the question, this Court has left open in Juidice v Vail 430 US 327 Fn 13; [that was not conclusively resolved in Huffman v Pursue Ltd 420 US 592] that the principle of Federal Court's "non-intervention" stated in Younger v Harris 401 US 37 [perhaps applicable to criminal cases] does not apply to Civil Proceedings, in the Federal Courts ?

2 Since the U. S. Constitution

A vests "Judicial Authority in the Judicial Branch"

B and "*such vesting*" is limited to [or the authority is vested in] the "Federal Judges only"

C and that "Judicial Authority cannot be *delegated* "

D and that a "signature" on a documents represents the identity, authenticity and *facially* demonstrates [or leads one to believe in] the authority of *the person*, signing a document [in this case the Judicial document emanating from a Federal Court];

a) Then why any litigant must accept and be bound by any written "decision or order issued in the name of a Federal Court", that is not signed by the "Judge(s) Of The Court" [but is signed by Clerk(s)] and treat such "decision", to have been reached and issued by a "Constitutional Judicial Authority" and AS NOT OFFENSIVE to the U. S. Constitution ? AND

b) Whether personnel employed by the Court Of Appeals in the Second Circuit have "unquestioned unlimited authority" to take "any action, such person chooses" in the name of the Court Of Appeals, that is beyond the purview and in violation of the U. S. Laws ?

3 During the enactment of and the subsequent amendment to the Civil Rights statutes [such as 42 USCS 1981, 42 USCS 1983 and 42 USCS 1985], have the U. S. Congress expressly declared that, *only claims arising out of "common law negligence"* , are compensable and that CLAIMS of any other nature, such as " an action based upon Fraud", causing

damages to claimant's are, untenable, prohibited or *barred*, under the above Civil Rights statutes ?

A Then under such circumstances, why is it not proper, to file "an action based upon Fraud"; upon defendant's engaging in Frauds and Conspiracies, causing violation of a person's rights under the 14th Amendment of the U. S. Constitution, during a state Court proceeding, where the Federal defendant counsels [in this action], themselves, were not parties to those actions ?

4 In view of the fact, U. S. Congress has remained silent while passing and amending the Civil Rights statutes [such as 42 USCS 1981, 42 USCS 1983 and 42 USCS 1985] as to application of " *Time [statute of] limitations"*-to file claims for Civil Damages, upon their violations:

A and the U. S. Supreme Court has consistently applied *forum state statutes* for resolutions for determination and application of time limitations; while applying Federal Statutes, for controversies under review, upon finding, that, U. S. Congress has not enacted "statutory time limitations", in those statutes, to be applied;

B then, under such circumstances, why is it not proper to borrow and apply provisions from N. Y. State Statutes [or in case in other states, their "similar" statutes], for application of time limitations, under NY State CPLR 213;

C then, under such circumstances, why is it not proper to borrow and apply provisions from N. Y. State Statutes, for determination and application of time limitations, under NY State CPLR 213, *subdivision 1* [applicable "where statutes of limitation is not specified"];

D under such circumstances, why is it not proper to file "an action based upon Fraud" under *subdivision 8* of NYS CPLR 213, causing damages to a litigant or claimant?

5 Do the RICO statutes 18 USCS 1961 *et seq.* [18 USCS 1962 *et seq. And* 18 USCS 1964 *et seq. inclusive] limit* their applications to "Commercial Injury" only and that an individual like this Petitioner cannot claim, any claims for Civil Damages, TO HIS RIGHTS [including any property], in any Court ?

6 Do the RICO statute *require, that the defendant(s) facing a Civil Proceedings must have* violated *each and every element of* 18 USCS 1962 (a),(b) **and** (c) for a plaintiff to successfully prosecute a viable Civil damage claim, under RICO ?

7 Have the U. S. Congress expressly stated or declared that, the defendants must have violated each and every section [to wit] (a),(b) **and** (c) of 18 USCS 1962; before any claims under RICO can be made or that such allegation(s) is(are) required to be made [that the defendants have violated each and every section of 18 USCS 1962] by a claimant, to succeed in his action at law, while pursuing Civil damages under RICO ?

8 Have the U. S. Congress expressly stated or declared that, claims under the RICO statutes [18 USCS 1961 *et seq.*; 18 USCS 1962 *et seq.; and* 18 USCS 1964 *et seq.*] can be filed for *negligence only* and that, claims arising out of the defendant's engaging in Fraud(s) RICO damages, are not tenable under Rico Statutes ?

9 Have the U. S. Congress expressly stated or declared that, claims under the RICO statutes [18 USCS 1961 *et seq.*; 18 USCS 1962 *et seq.; and* 18 USCS 1964 *et seq.*] can be filed only if the defendant has perpetrated two acts against the same plaintiff or victim or that two acts, perpetrated [against different persons] can qualify, for claims against one defendant ?

10 In view of the fact, U. S. Congress has remained silent while passing the RICO statutes and has not deemed necessary to amend "RICO" statutes, since their passage, *as far as determination or application of "time limitations" are concerned*; [18 USCS 1961 *et seq.*; 18 USCS 1962 *et seq.; and* 18 USCS 1964 *et seq.*] to file claims for Civil Damages, upon defendant's violating the statutes:

A and the U. S. Supreme Court has consistently applied *forum state statutes* for resolutions of application of time limitations and or borrowed from other Federal Statutes; while applying Federal Statutes, to controversies under review, wherein U. S. Congress has not enacted "statutory time limitations", in those statutes, to be applied;

B under such circumstances, why is it not proper to borrow and apply provisions from N. Y.

State Statutes [or in case in other states, their "similar" statutes], for application of time limitations, provided for under NY State CPLR 213;

C under such circumstances, why is it not proper to borrow and apply provisions from N. Y. State Statutes, for determination and application of time limitations, under NY State CPLR 213, *subdivision 1* [where statutes of limitation is not specified]

D under such circumstances, why is it not proper to file "an action based upon Fraud" under *subdivision 8 of NYS CPLR 213*, causing damages to a litigant or claimant?

11 Does any hearing, that is not meaningful, that is not full and fair; that is in violations of several U. S. statutes, the U. S. Constitution; that is ignorant of and inconsistent with the holdings and \ or rulings of the U. S. Supreme Court; is in violations of several N. Y. State statutes and the N. Y. State Constitution, that is ignorant of and inconsistent with the holdings and \ or rulings of the N. Y. State's Highest Court; that is superficial, perfunctory, a *make believe* process [*window dressing*] proceeding in a Federal Court, sufficient to meet the requirements of Due Process under the Fifth Amendment of the U. S. Constitution ?

12 Does any hearing, that is not meaningful, that is not full and fair; that is in violations of several N. Y. State statutes and the N. Y. State Constitution; that is ignorant of and inconsistent with the holdings and \ or

rulings of the N. Y. State's Highest Court, that is in violations of several U. S. statutes and the U. S. Constitution; that is ignorant of and inconsistent with the holdings and \ or rulings of the U. S. Supreme Court, that is a superficial, perfunctory, *or is a make believe* process [*window dressing*] or proceeding in a State Court, sufficient to meet the requirements of Due Process and Equal Protection clause under the Fourteenth Amendment of the U. S. Constitution ?

13 In view of the fact, Federal Courts [that means Federal Judges only] have Constitutional mandate and *affirmative duty* to enforce laws of the land; and U. S. Supreme Court establishes the Principles, Rules and Procedures for adjudicating Civil litigations in Federal Courts, that the lower Federal Courts are required to follow;

A Is it not correct to consider and accept, that, every Federal Court Judge has *affirmative duty* to "interpret" the Federal Law, within the Framework establish by the U. S. Supreme Court and the U. S. Constitution ?

B Is it proper for any Federal Court Judge(s) to ignore U. S. Constitutional Provisions, U. S. Laws; Decisions, Rulings of the U. S. Supreme Court; Principles, Rules and Procedures *"established"* by the U. S. Supreme Court and railroad any litigants;

C Is it proper for any Federal Court Judge(s), to refuse and fail to "enforce" the laws of the land, upon litigant's invoking Federal Court's

jurisdiction ?

D Is it proper for any Federal Court Judge(s) to refuse to take judicial notice [even when a litigant specifically requests to *"do so"* and when it is statutorily mandated] of the State & Federal Statutes, the N. Y. State and U. S. Constitution;

1 and abide by the decisions of the United States Supreme Court,
2 of the N. Y. States Courts decision and interpretation of the N. Y. State Laws and the N. Y. State Constitution ?

E Is it proper for any Federal Court Judge to offensively apply, misconstrue or abuse the U. S. Statutes and *under guise of administering justice*; direct improper, hostile and prejudicial remarks or acts, towards any litigant and particularly against a Pro Se litigant in a Federal Court Judicial Proceeding ?

F Is it proper for any Federal Court (either a District Court or Appellate Court) Judge(s) to misstate, misconstrue "litigant's record"; fail and refuse to accurately *refer* to the record in the Federal Court's written decisions and orders and thereby mislead the *"superior reviewing authority as to the litigant's record"*, resulting in absolute miscarriage of justice ?

14 Why this Pro Se litigant:

A should accept and treat the proceedings as *Full and Fair, meaningful, equitable, without prejudice and hostility as well as economical*;

B should not consider the proceedings heretofore as *imposing, oppressive, prejudicial, hostile and burdensome;* in violation of and depriving him the protection of the Sixth, Eighth and the Thirteenth Amendments of the United States Constitution;

C should not treat the proceedings in lower Federal Courts, in fact being unconstitutional ?

D and therefore, should not call the proceedings, he has undergone, in the lower Federal Courts as totally discriminatory, depriving him of *"the due process"* guaranteed by the Fifth Amendment of the U. S. Constitution;

E and therefore, treat the imposition of burden in the Lower Court Proceedings causing tremendous drain on my resources as violative of "unreasonable and unusual punishment", prohibited by the Eighth Amendment

F and "oppression and deprivation of my rights" in the Lower Court as violative of prohibition under the Thirteenth Amendment ?

Complete Title Of The Cases

Case No. 1... CA2NY Docket No. 00-7090

Ashok Kashelkar Plaintiff-Petitioner

v

Bruce Muldoon; Harold Y. MacCartney, Jr; MacCartney, MacCartney, Kerrigan &MacCartney, Debora J. Dillon, William R. Watson; O'Connor, McGuiness, Conte, Doyle, Olsen & Collins; John Doe No. 1; Jane Doe No. 1; John Do No 2, Jane Doe No. 2

Defendants-Respondents

Case No. 2 CA2NY Docket No. 00-7751

Ashok Kashelkar Plaintiff-Petitioner

v

Rubin & Rothman, Joseph Latona, Robin Long, Keith Rothman, Scott Rumph, Household Bank F. S. B. ; Household International, Inc.; Household Recovery Services; John Doe No. 1; Jane Doe No. 1; John Do No 2, Jane Doe No. 2

Defendants-Respondents

List of the Counsels for the Respondents

Case No. 1... Ashok Kashelkar v
Harold Y. MacCartney, Jr, et al

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Case No. 2 Ashok Kashelkar v Rubin & Rothman, et al

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Rule 14.1(d).... The Court Of Appeals Docket Numbers

Case No. 1 CA2NY Docket No. 00-7090

Ashok Kashelkar
Petitioner
-against-

Harold Y. MacCartney, Jr et al
Respondents

Case No. 2

ASHOK KASHELKAR CA2NY Docket No. 00-7751

Petitioner
-against-

RUBIN & ROTHMAN ; et al

Respondents

Petitioner's statement

This statement is offered, in response to requirements under Rule 14.1(e), Rule 14.1(g) and 14.1(h)

Ashok Kashelkar, petitioner herein respectfully states, that, this is a "complex litigation" and I am presenting this Joint Petition for two cases.

I have taken considerable pain, have made a lot of efforts to comply with all the applicable rules and of course have spent a great deal of money and time, to put together, this Joint Petition, under Rule 12.4.

The accompanying Appendixes offer extensive support material and I have offered and presented my arguments in best possible manner. Simplification would require considerable more space and I find it very difficult to make it fit within the available space.

May I respectfully request that this Petition may please be accepted.

Respectfully submitted,

Ashok Kashelkar.... Pro Se Petitioner
6 Innington Court, Spring Valley NY 10977
Tel (845) 426 2902

Jurisdictional Statement,
conforming to Rule 14.1.(e)(i)

This Petition is filed, pursuant to Supreme Court Rule 12.4 [on account of similar issues presented in the underlying lower Court proceedings], for the two cases, this Petitioner filed in the District Court of Southern District of New York [DC-SDNY or DC] and then appealed them to the Court of Appeals for the Second Circuit.

This petition respectfully seeks leave of this Court's esteemed consideration, pursuant to Rule 10(a), by *invoking* this Court's "supervisory power", on account of the fact the lowers Court have decided my case-consisting of several important Federal Questions-by departing from the accepted and usual course of judicial proceeding [contrary to several decisions and holdings of this Court-of the last 200 years] and in doing so, gravely violated my Constitutional rights.

The Court Of Appeals [CA2NY] also sanctioned "extreme departures" by the DC-, in it's proceedings; by ignoring the serious infractions, in the DC proceedings, notwithstanding every attempt, I made to seek Constitutionally acceptable decisions, from the CA2NY.

I made "unusual requests" to the CA2NY [as seen in [Appendix C Pages 41, 47 and Appendix B Page 52] for CA2NY to "certify questions" to this Court, pursuant to this Court's Rule 19. My requests have been denied [Appendix B Pg 52 and Appendix B Pg 18-20].

Your Petitioner respectfully seeks leave, to *invoke* this Court's jurisdiction, for "extraordinary writ", subject to U. S. Supreme Court Rule 20.1 and pursuant to 28 USCS 1651(a) on account of the fact, I have raised several "specific"

questions [as can be seen in Appendix D-Pg 19-21 and E-Pg 31-33] in lower Court [Appellate] proceedings, which the CA2NY left "untouched" and therefore, issuance of an "extraordinary writ" will be in aid of the Court's appellate jurisdiction.

The *"exceptional and unusual circumstances"* are reflected in Appendix C. Such highly unusual circumstances [offering proof of total denial of Due Process guaranteed by the Fifth Amendment of the U. S. Constitution] are mind boggling and absolutely warrant exercise of this Court's discretionary powers and that adequate relief [that I strenuously attempted to seek in the lower Court proceedings, including and beginning in the DC but did not receive] cannot be obtained in any other form and from any other court.

A review of all the Appendixes, submitted along with this Petition must demonstrate, that, my two "Complex Litigations" have raised numerous Fundamental Questions about the process and methodology of administration of laws, conforming to most basic tenets of the Federal Constitution.

This Court in *Marbury v Madison* 1 Cranch 137, 177 termed the function of the Federal Court as "[t]he province and *duty* of the judicial department to say what the law is". The CA2NY refused to exercise it's "supervisory authority" and [discharge it's "duty" per *Marbury*, supra] under the Constitution to interpret the Federal Statutes. CA2NY refused to enforce the Federal Statutes, already interpreted by this Court and follow the guidelines established by this Court, under this Court's supervisory authority, pursuant to *Dickerson v U. S.* 530 US 428, 437 [2000] *cf. Carlisele v U. S.* 517 US 416,426. Alternately CA2NY refused to "certify questions to this Court pursuant to this Court's Rule 19 or undertake review of my two cases pursuant to 28

USSC 2106. In doing so, the lower Courts exhausted my Statutory rights of Constitutional Proceedings, before them. That lead this matter to your door step.

Supporting Arguments: Even though, time and again I requested the DC and the CA2NY to "rule on [and as] the matters of Law" the requests have been ignored. The final command in *Marbury*, supra,180 is.."[T]he rule must be discharged" but the record [partly in Appendixes herein], shows that this Court's, long standing *"instruction"* were ignored.

May I respectfully bring to the attention of this Court's opinion in "*Ex parte Young*. 209 US 123,143, [citing comments of Chief Justice Marshall in *Cohens v Virginia* 6 Wheat 264, 404]

> "[I]t is most true that this court will not take jurisdiction if it should not; but it is equally true that it must take jurisdiction if it should. The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the Constitution. We cannot pass it by because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the Constitution. Questions may occur which we would gladly avoid, but we cannot avoid them. All we can do is to exercise our best judgment, and conscientiously to perform our duty.

Chief Justice Marshall went beyond the above and has commented..in *Cohen,* supra..as follows

> "[I]n doing this, on the present occasion, we find this tribunal invested with appellate jurisdiction in all cases arising under the Constitution and Laws of the United States. We find no exception, to this grant, and we cannot insert one". *Cohens v Virginia* 6 Wheat 264, 404.

When the above is *read* in perspective with this Court's observations in *Dickerson v United States* 530 US 428, [also part of the "holdings"] at 437.

> "[C]ongress retains the ultimate authority to modify or set aside any judicially created rules of evidence and procedures that are not required by the Constitution." *Cf. Palermo v US* 360 US 343, 353, n 11 (1959) [citing *Funk v US* 290 US 371, 382 (1933) and *Gordon v US* 344 US 414, 418 (1953)] . ....."[B]ut Congress may not legislatively supersede our decisions interpreting and applying the Constitution. See, e.g. *City Of Boerne v Flores*, 521 US 507, 517-521(1997)]." Id.

Under the circumstances "<u>none of my Constitutional Rights</u>" can be "vitiated or nullified" by *any* act of Congress or act of an Officer of Government, in any branch. That would be contrary to and meaningless to the holdings of this Court, concerning "*Individual's Liberty*", as determined in *Poe v Ullman* 367 US 497 [Generally].

May I also suggest, that, this Court in *Bose Corp. v Consumers Union* 466 US 485, 510-511, reaffirmed it's holding in *New York Times v Sullivan* 376 US 254, relating to "independent appellate review" of matters involving Constitutional Law as the Court observed, at 510-511, such review is essential, "[i]n order to preserve *precious liberties*

established and ordained by the Constitution". Similarly this Court, *cf NAACP v Claiborne Hardware Co.* 458 US 886, 915-916, n 50 and concurring in the judgement in *Houston v Hill* 482 US 451 n 6, agrees that "independent review of record" is appropriate where the activity in questions is protected by the Constitution. Even Justice Scalia concurred with Justice Powell's [separate opinion] in part II. *Id.*472-473.

Record of my both the cases supports, that, *my activities* of "seeking redress, in the Federal Court", arising out of the Federal Defendants, previously violating my 14th Amendment rights "<u>are protected</u>" by the U. S. Constitution. But the lower Courts totally frustrated my efforts, from the outset [since the Rule 16 Conference, before DJ McMahon [DJ]-Appendix B pages 1 to 33]. This is a clear example of Congress and Constitution granting Rights and Remedies to me [or any litigant]and Courts taking them away.

In view of the above reasons [<u>but not exclusively</u> for the "above reasons only"], your Petitioner respectfully suggests, that there is more than sufficient basis for this Court to take Jurisdiction, of the within appeals.

Case No. 1

Ashok Kashelkar v Harold Y. MacCartney, et al
Court Of Appeals for Second Circuit Docket No. 00-7090

Rule 14.1.(e)(i) Nov. 07, 2000 Summary Order of Court Of Appeals for the Second Circuit, affirming the U. S. District Court Decision, Order and Judgement was entered [Filed] on Nov. 07, 2000 [attached or appended in

Appendix B-Pages 1 to 3

Rule 14.1.(e)(ii)	Feb. 09, 2001 Court Of Appeals Order denying Panel Rehearing, entered [Filed] on Nov. 07, 2000 ; that is appended herein in Appendix B-Pages 11-12
Rule 14.1.(e)(ii)	May 31, 2001 Court of Appeals order denying Motion to accept Timely filed En Banc hearing request, entered [Filed] on May 31, 2001; That is appended herein at Appendix B-Pages 18-20

This matter was "argued" on Nov. 01, 2000 before a panel of Three Judges of the CA2NY. A total of Five minutes were provided to this Petitioner and 2.5 minutes were provided to the two counsel [out of three], who appeared.The arguments consisted of each party making statements on the Record.

I "read" excerpts from *Hurtado v California* 110 US 516, relating to the "objectives of a written Constitution"; "limits of the power and authority of each branch of Government [including the Judicial Branch]" 531-533 and observations of Justice Frankfurter re "vague contours of Due Process"... and that "judges are not left free" to draw their own conclusions re Due Process" in *Rochin v California* 342 US 165, 170-171. Even though, I offered these extremely important cases, in support of my arguments, *none* are reflected in the Summary Order. I again raised the same "issue" in my Motion, dated July 02, 2001. [Appendix F, page 3 & 4]

In fact counsel Robert Sylvan of Garcia & Stallone, representing O'Connor, McGuiness et al made an "outright

false statement to the Appellate Panel.. that,... I was looking to ....."reverse the State Court Judgement"..... even that is not reflected in the Summary Order [Appendix B-Pages 1-3].

For that reason, in my letters to the CA2NY Clerk's office, I have raised a most basic question. "as to the appellate process leading to the Summary Order".[AP C. 49-56 & 64-83]

Hon. Amalya Kearse, the Presiding Judge of the Panel indicated that the decision of the Court was "reserved".

The panel members did not ask any questions. The decision was issued on Nov. 07, 2001 and bears a Court Of Appeals Stamp [Filed] showing Nov. 07, 2000 as the date of entry.

In essence, the Court Of Appeals "affirmed the District Court decision, "substantially for the reasons stated therein". The District Court decision is attached in Appendix B-Pages 4-11.

The CA2NY, essentially "endorsed" the DC Decision, notwithstanding my presenting "pointed" arguments, in support of my appeal, entirely based upon the Constitutional Provisions, Statutes, decisions and holdings of this Court.

I respectfully refer your attention to the Appendix D offering "distilled " version of arguments and issues raised [based upon the District Court record] in the Appellate Briefs.

The issues, now raised on Appeals, are reflected in Appendix D Pages 19-51, [HYM matter] forming part of this petition. It is not possible for your Petitioner to "restate" every argument and offer every "citation", in this Petition, "for want of space". However the *extensive* "Authorities" I cited in the Lower Courts, Appendix D, in pages 1 to 18 can tell "a story".

The questions, "presented" in this Petition are "amplified" versions of the "issues raised" in the lower Courts.

Case No. 2

Ashok Kashelkar v Rubin & Rothman, et al [R&R]
Court Of Appeals for Second Circuit Docket No. 00-7751

Rule 14.1.(e)(i)	Jan. 02, 2001 Summary Order of Court Of Appeals for the Second Circuit, affirming the U. S. District Court Decision, Order and Judgement was entered [Filed] on Jan. 02, 2001 [attached or appended in Appendix B-Pages 20-24.
Rule 14.1.(e)(ii)	Feb. 09, 2001 Court Of Appeals Order denying Panel Rehearing, entered [Filed] on Feb. 09, 2001; that is appended herein in Appendix B-Pages 50
Rule 14.1.(e)(ii)	May 16, 2001 Court of Appeals order denying Motion to accept Timely filed En Banc hearing request, entered [Filed] May 16, 2001; appended herein Appendix B-Pages 52-53.

This matter was "argued" on Dec. 20, 2000 before a panel of Three Judges of the CA2NY. Five minutes were provided to each side.

I *"read"* excerpts from *Board Of Regents v Roth* 408 US 564, 576-577 [1972]; re *my property rights, violated* the

Federal Defendants, in violation of the 14th Amendment, during the Rockland County (state proceedings)], giving rise to this litigation and cited *Buckley v Fitzsimmons* 509 US 259, holding that, even a prosecutor is held accountable and liable under 42 USCS 1983, for Fabrication of evidence. In rebuttal, I also "refuted" the arguments of defendant's counsel, Joseph Gershman, ESQ by informing the Appellate Panel, that, the Federal defendants in fact *Fabricated Evidence,* used U. S. Mail or Commercial Carriers to "transport" the *Fabricated evidence* in interstate transactions, then served (upon me) and filed in the State Court proceeding by using U. S. Mail. None of my statements and or arguments or my answers to the Judge's questions are reflected, in the Summary Order.[Appendix B..pages 20-24]

The panel members, included Hon. Pierre N. Laval [also member of Case 1, panel] asked a few *"basic"* questions relating to my case , to me and I answered them, fully well. Then, it became apparent to me that, the Panel Judges were either mislead by reading *"something"* or were not familiar with the record and my Briefs on Appeal, at all. I have commented about this matter, in Appendix F, page 7, para 19 of the affidavit. Such a situation *defeated* the "*process of appeal*".The decision was issued and filed on Jan. 02, 2001.

In essence, the CA2NY "affirmed the District Court decision, "substantially for the reasons stated therein". The District Court decision is in Appendix B-Pages 24-49.

May I respectfully refer your attention to the Appendix A, B, C, E, & F. Appendix E offers a "distilled" version of the "arguments presented and issues raised", in lower Courts.

The issues, I raised on Appeals, are reflected in AP E Pages 31-33 and 74-75, forming part of this petition. It is not

possible for your Petitioner to "restate" every argument and offer every "citation", in this Petition, "for want of space". However, the extensive "Authorities" I have cited in DC and CA2NY are reflected in Appendix E Pg 1-13.

The questions, "presented" in this Petition are "amplified" versions of the "issues raised" in the lower Courts.

The Appendixes:

A Contains, all the Authorities, I have relied upon in the Lower Court proceedings, [verbatim reproduction of applicable portions of statutes and rules etc. is provided, conforming to Rule 14.1(f)]

B Consists of ALL Lower Court Orders.

C Has evidence of the "unusual and very extraordinary nature of proceedings, in lower Courts"

D Has excerpts from the Appellate Brief in Case 01.

E Has Excerpts from DC & CA2NY briefs in Case 2.

F Contains my last Motion to the Court of Appeals to bring the "extra statutory and extra Constitutional acts of the Court Of Appeals employees, to attention of the Judges and the response, dated July 12, 2001.

The Appendixes will be referred to as AP A 33 = Appendix A Page 33, in this Petition.

Petitioner's Contentions

It is not very likely that, a litigant [and that too a Pro Se

litigant] may have two Federal Judicial Proceedings commenced, for egregious Constitutional violations and misconduct perpetrated by the *"very highly regarded professionals" and* simultaneously filed, in one Fed. Court.

I am personally and seriously affected by the issues of \ in the two actions and therefore has valid claims, under Article III of the Constitution, to bring the matter to this Court.

The lower Courts failed to [or refused to ??] "address" the issues [questions] raised, hereunder !

Question 1, 11, 12, 13: Common Law-it's impact and effects on Constitutional Rights of Individuals. This question is posed, on account of the District Court decision, in **Case 1**, that, Bruce Muldoon (BM), Law Secretary of Meehan J. Acting Supreme Court Justice, in Rockland County N. Y.; cannot be sued *Oliva v Heller* 839 F 2d 37, 39 granted "Quasi-Judicial Immunity", to him.

"Common Law Concept and Judicially created immunity or privilege" by Court Of Appeals [other cases are cited in *Heller*, supra]" conflicts with *Hurtado v California* 110 US 516, that "objective of the statutes is to remedy defects in common law"at 533; and *US v Lee* 106 US 196,220 holding that, "no man is above the law".. "and no officer of law can act in defiance of that law ". The "absolute immunity" granted to BM has caused "irreparable harm" to me, based on this Court's finding in *US v Nixon* 418 US 683, 711-712 .

Of course, the entire "immunity" business commenced with *Randall v Brigham* 7 Wall 523 [1869], fortified by *Bradley v Fisher* 80 US 335,[1872]; affirmed in successive cases with the present status of it's becoming *"an avalanche"*.

In *Barr v Matteo* 360 US 564 [1959] at 569 the Court observed that "[t]he law of privilege...has in large part been of judicial making". *Bradley, supra* became the "magic word".

It is absolutely important to note, that, the U. S. Civil Right Laws were not considered, in the *Bradley* action. In fact the Civil Rights Laws, passed in 1871 were not even raised, by any one. The *Bradley* Court based it's entire decision on English Commons Law and decisions, such as *Taaffe v Downes,* 3 Moore P.C. 41, n; *Yates v Lansing*, 5 Johns 291 and even an earlier one *Floyd v Baker* 12 Coke 25 [1608 A.D. ?] and other are totally based upon English Common Law and the U. S. Constitution was *never* considered.

Subsequent cases - *Spalding v Vilas* 161 US 483, Yaselli v Goff 12 F 2d 396 [CA2NY] Aff'd per curiam 275 US 503 [based upon *Bradley*, supra]; *Tenney v Brandhove* 341 US 367 [matter of a legislators] *Barr v Matteo* 360 US 564 and so on have accepted *Bradley*, supra as it's base. None of the Justices, in any case, appear to have raised the issue of U. S. Constitution and Laws, as the "real bar" to such " *Bradley* common law" immunities.

Even though this Court used "objective reasonableness" as the [NEW] standard, beginning with *Harlow v Fitzgerald* 457 US 800, *to cause some change*, it is "still a common law concept". Not much different than changing a Brown Horse for a Black One. Granting such "immunity" has been great "security" for the Govt. Employees, *fostering* their "*faith in impunity*". I am calling upon this Court to revisit this "thorny" but UNCONSTITUTIONAL subject.

Justice O'Connor in *Tower v Glover* 467 US 924 at 922-923 has suggested that "[w]e do not have license to establish immunities from [42 USCS] 1983 actions in the interest of

what we judge to be sound public policy."

The actions of all the attorney defendants, in my two actions, under appeal herein and even the most recent misconduct of CA2NY Clerk's employee [AP C 48-84] show that the defendants herein and the Govt. employees [also attorneys] appear to claim, that, *they are* above the laws and *are laws unto themselves.*

Is that any different than the acts of the English *sovereign* Henry The VIII [In 1534] of beheading Sir Thomas Moore- who was no less than Archbishop of Canterbury and his own wife, Anne Bolane (??)on truncated charges; mother of Elizabeth, who ruled later ? That is the "common law" rule. That is *sovereign* power.

The States [and Federal Govt.] are created as *body politic* and their power is subject to the State & U. S. Constitution. Neither States nor U. S. Govt. can be called "*sovereign*" as H.H. Henry was. His daughter succeeded him. No election was needed. Both ruled in their own ways and were as ruthless as other "*sovereigns*" in Europe. Would current NY Governor, Pataki's daughter succeed him, to *rule* NY ?

Late President Nixon came close to such abuse of power in October 1973, [dubbed October massacre] when he fired Prof. Archibald Cox, after his Atty Gen. Peterson resigned, rather than act, illegally]. That was *imperial* Presidency.

The Government employees are limited in their authority and are answerable to the claims made under Constitution. This Court has ruled so, in *Poindexter v Greenhow* 114 US 274. Otherwise, *U.S. v Lee, supra* and all other cases would mean nothing more but faded prints. The "Immunity and privileges" under discussions are *real dichotomy* created by the Courts,

contrary to the Court's interpretation of Constitutional law and perhaps *repudiation* of numerous cases of the last 200 years and the U. S. Constitution. Time has come to rectify the *"obvious contradictions"*.

Now compare the following:

Beth Meador of CA2NY has admitted in writing of 1) not filing my motion [AP C 49x is the proof] 2) therefore it was not submitted to the Judges and then 3) returned it to me. and 4) did not submit my March 16, 2001; till I wrote the letter of May 12, 2001; that is ruled on May 31, 2001 [AP B 18-20].This is clear violation of 18 USCS 1512 and further "threats to me" are violation of 18 USCS 1513.

Even DJ did not think before making *"intimidating"* remarks to me, AP C 27 (line 1-4) about monetary sanctions. I prepared my affidavit and submitted it to the CA2NY [AP C 1-13]. CA2NY, through it's decision, but the CA2NY did not bother to even acknowledge that, such an affidavit is filed. Nothing on the subject appears in it's Summary Orders, but a remark that, there has been "no hostility or prejudice in DC proceedings" towards me.

What "drives" the above officials to engage in such conduct ? Their *confirmed* belief that, <u>they are the law, above the law and that there is no one to question them</u> ? Hold them accountable for their acts ? **That is sad.** This is *shown to be* Government of Men [by the acts of officials], contrary to the claims of <u>"Government of Laws"</u> *Marbury,* supra at 163.

I cannot accept that the DJ <u>does not understand</u> may claims as decisions claims.[as can be seen AP B, D, E].

By using the <u>eleventh amendment and \ or "Quasi Judicial</u>

Immunity" as a *subterfuge or camouflage*, the DC, "in effect "objectively" immunized" BM.

This *argument* is supported by the observations of C. J. Rehnquist in *Bond v US* 529 US 334, 338 n 2 regarding. ....."objective effect of the action". [cited in AP C-73]

In the same manner, by citing *cases* [AP B-8] the DC dismissed my Civil Rights claims [for reasons cited therein] against all other defendants. The DC calls the State & Federal Penal and Constitutional Violations defendants perpetrated in State Court Proceedings as "irregularities".

Of course, in one swoop, the DC "*disregards*" the Fourteenth Amendment of U. S. Constitution [AP A-3] [and it's progeny of hundreds of cases] as well as the N. Y. State Constitutional Provisions [AP A-43] and the cases decided by the NYS Courts.

AP D-26-44 shows my allegations of all the defendants violating dozens of NYS Penal statutes, leading to "extortion of my rights & property" for my RICO claims and several US Statutes [Civil & Penal] to violate my Civil Rights.

There is a greater reason, for DC's extending such help to defendants. Def. Harold Y. MacCartney [HYM], in fact committed "perjury" by filing a "*false affidavit*" in support of Summary Judgement, contradicting his own answer", signed concurrently, in the DC, Motion Practice. That is in violation of 18 USCS 1621 and 18 USCS 1623. I have dealt with this issue at length. Part is in [AP D-48-49].

In fact, I would suggest the DC *"UNDERSTOOD & noticed the HYM perjury", at the outset*. Instead of abiding by the oath of her office to "performing Constitutional duty", the

DC "*intimidated and threatened me*" in the FRCP Rule 16 conference [that can be seen in AP C 1-31]; wherein the DC warns me of "*monetary sanctions*", contrary to *North Carolina v Pearce* 395 US 711. That prompted me to cite *Mesarcsh v US* 352 US 1, re *polluted* waters of Justice, *Elkins v US* 364 US 206, re *"judicial integrity"* and *McNabb v US* 318 US 332, 345 [Frankfurter J.] warning that flagrant disregard of procedures Congressional commanded. would..make.."courts themselves accomplice in wilful disobedience of law," in my Appellate Briefs.

In "real [non-governmental] world, anyone tolerating or encouraging "*subornation of perjury*" is indictable under 18 USCS 1622. Who will hold the Court Personnel [and Judges too] accountable, for that ?

Looking at Fn1, AP B 11, the statement..."[b]ut it is not necessary to treat the motion for summary judgement in order to dismiss the action" SDNY-DJ may have "avoided to take HYM Affidavit [with perjury] into consideration. But in doing so, DJ "intentionally and knowingly" avoided her responsibility to deal with HYM perjury " in Federal Judicial Proceedings. Why would anyone call this a JUDICIAL PROCEEDING ? Please see *Smith v Robbins* 528 US 259, 286 [generally].

District Judge Susan Weber Wright acted to sanction President Clinton and the Hon. Chief Justice is more familiar with that entire melodrama than anyone else.

Whatever prompted DJ or the CA2NY judges from performing their Constitutional duty ? The."objective effect is discrimination towards me", *Bonds, supra*. The judges saved the counsels from Gallo, at my cost and millions of others. That is also *offensive* to the Constitution. Please see *US v*

Classic 313 US 299, 331 [generally]. Such official acts are performed with *confirmed belief* that, all my Constitutional rights will be extinguished at the CA2NY level and I will not have any grounds, based on RIGHTS, to come to this Court.

Case No. 2 The DC [notwithstanding my presentation part of which is in AP E] and presenting "documentary" evidence under the very signatures of the defendant's [and employees] *that is admissible, at Trial*, is against the "interest" of the defendants, showing "statutory violations" over a long period of time [and therefore meeting every conceivable requirement of RICO and Civil Right claim s] dismissed all claims, for reasons cited, in it's decision. [AP B 24-49].

DC used the HYM case, *to base and judge* the R&R Case. By doing so, the DC, in fact provided "protection" or immunity to the defendants. That is the "objective effect" discussed in *Bonds v US*, supra [opinion of C. J.].

DC also employed *Rooker-Feldman* doctrine to dismiss the claims. I have argued that the Defendant attorneys in both the cases were not parties to the previous State Proceedings, but they represented different parties. Please see *US v Goodwin*, 457 US 368, for comments, re "institutional bias".

Exception is that of Household International Companies (HI), in the second action [they had interest in State action] but in reality none of the HI defendants herein [were in technical sense party to the State proceeding-since R&R used a...nonexisting company name, to sue me]. I did not create "that" situation. Besides, the HI companies are here because their conduct their business by employing multiple statutory and regulatory violations. HI could not care at all as to

whatever papers were presented for their cause, by their attorneys [their agents] as long as the HI got their money, in their pocket. Such reckless disregard for laws, requires appropriate response.

In Rockland action by R&R, Justice Rudolph was totally hostile and unsympathetic to me in applying even the State Laws and could not care less about any other FEDERAL laws [This Court recognised *such a possibility* in *Kaufman v US* 394 US 217, 225]. Even though Justice Rudolph was *"well versed"* in *laws* compared to me [and his duties under U. S. Constitution, Article VI required him to conduct and also was required to take Judicial Notice by NYS CPLR 4511], he did not bother. Justice Rudolph's duty to provide 14th Amendment protection is recognised by *Daniel v Williams* 474 US 327, 331-332. I was not protected, in his Court.

DC decision and order contains so many errors, that, I have highlighted them in AP B 24-49 and provided excerpts and comments AP E 51-74 [in appellate brief].

Because, the DC used *Davidson v Garry* 956 F Supp 265, 268-269 Aff'd 112 F 3d 503 [CA2NY 1997] that in essence used *Rooker-Feldman* doctrine as well as *Younger v Harris* 401 US 37 [1971]; as it's vehicle in HYM matter,[see AP B-7]; it is necessary to decide the "undecided issue" as to whether *Younger* has any application to Civil Proceedings My response is "NO", it does not apply. [Question 1 C]

DC in R&R action "objectively in effect" immunized the defendants [per *Bond*, supra]

While finding "proof" of a "wrongdoer's" misdeed, usually becomes subject of protracted "discovery" pursuant to the FRCP rules, I presented my claims, with admissible proof, at

the outset with complaints. The admissible proof is under the signatures or writings of the named defendants themselves.

Question 2 and 12: Judicial Authority and Acts of Non Judicial Personnel: have total bearing on all the orders, I have received from the CA2NY [AP B. including the Summary Orders [both cases] the HYM Mandate]. AP C Pages 34 to 84 show that, ALL the "orders" I have received, none are signed by any Judge Of CA2NY. All are "signed" by the CA2NY Clerk's office personnel. I am *alleging*, that, they have acted on their own, without presenting anything to the Judges and even writing the Summary Orders, contradicting the entire Constitutional Scheme.

This *allegation,* arises out of the CA2NY issuing it's March 09, 2001 "denial" [AP B 13-14], for extension of time. That *denial* contains my "request for RIGHT TO *WORK"-as a good cause*, seeking extension under FRAP [permitting a litigant to request extension of time for "Good Cause".

The *denial* does not offer any reason, at all. There is NOTHING in the "so called decision of denial from CA2NY that anyone can infer anything" to find as to the exact reasons, my request was denied. This is identical to this Court's observing in *M. L. B. v S. L. J.* 519 US 102,121-122 . "[O]nly a transcript can reveal to judicial minds other than the Chancellor's, the sufficiency or insufficiency, of the evidence to support his stern judgement.

In *Black v Romano* 471 US 606, 611-612, this Court held that, "[T]he probationer is *entitled* to *written notice* of..... and....*written statement* by fact finder as to the evidence relied on and the reasons for revoking probation" [citing *Gagnon v Scarpelli* 411 US 778, 482, etc.]. Is it improper for me to know, as to the "exact reasons" the decision maker relied

upon while reaching the decision to deny me the right to work and earn living?

Not understanding the reasons, why the CA2NY Judges would deny me the "most basic right" to work by refusing to give two more weeks to file En Banc Petition , I have concluded that, the Judge's were not reading the papers or *did read the papers* but wanted to disregard this Court's decisions and rulings about basic rights. That does not comport with my respect to all of them. That prompted me to ask for " statutory or constitutional reasons for *such a decision* and identity of person(s) reaching such a decision in my Motion of March 23, 2001 [AP C 44-Para 10].

Questions arise, as to who wrote ALL the decisions and orders ? Would any Judge of the CA2NY come forward and claim authorship of the "so irresponsible" and "*recklessly disregarding*" Supreme Court decisions, the Federal Statutes and the Constitution ? Or these are acts are of Non Judicial Personnel ? Who delegated such authority to any of them ?

Justice Scalia dissenting in *Mistretta v US* 488 US 361, 424-425 has commented that, the "*Judicial Powers are not delegable*". Justice Scalia cited *J. W. Hampton Jr. & Co. v US* 276 US 394, 406 [limits of delegation]; *Yakus v US* 321 US 414 [war making powers] and *Field v Clark* 143 US 649, 692 [Congress cannot delegate legislative power to the President](1892) opinion of Justice Harlan and finally "[a] judge may not leave a decision to a law clerk or a master" *US v Raddatz* 447 US 667, 683; support the premise.

The result of my inquiry in March 23, 2001 affidavit [AP C 42-47] is Beth Meador's letter of April 6, 2001 [AP C 48-49] along with which, Ms. Meador returned my March 23, 2001 Motion, with a clear THREAT of sanctions from the

Court. AP C Page 49-X will show, that the Motion [AP C 42-47], was not filed, at all. That, of course, prompted me to write the next letter, with questions about the "process" followed in Clerk's office [AP C 49-57] and a "pointed questions" on pages AP C 53 to 55, about the "criteria" for "handling Motion papers" in the Court. **I never received any answer.**

Besides, this is an "elementary & common sense" issue. The I. R. S. of the U. S. Dept. of Treasury holds the Taxpayer, responsible, even though a professional tax account may prepare and sign the return. The Taxpayer is required to sign, it. Signature is the source responsibility and accountability".

By refusing to answer my questions posed on pages AP C 53 to 55, the personnel in CA2NY Clerk's office have given reason for me to suggest that, the decisions on the motion and perhaps even the Summary Order were not taken by any of the Judges of the CA2NY [even though they are issued in the name of the CA2NY Judges.

The letters from Ms Meador of CA2NY { AP C 57-59 and 63-64 }, further admitting "lapses" prompted me to write the next letter, AP C 64-83. There is no question in my mind that, it is "well known" in the Federal Courts, that, Cases filed by and Appealed by "Pro Se" litigants are to be treated that way. No wonder, DJ. was "so absolutely certain, that NO MATTER what she will say or do, my reach was up to the CA2NY where, my cases would be "shredded to pieces" and I will Exhaust ALL MY STATUTORILY provided for recourse. Why a Federal Judge has to "approve an official transcript"? Please see AP C 8-9, para 43-44. Such "process followed in DC-SDNY.. CA2NY in *U. S. v Zichettello* CA2NY Docket No. 98-1376, admonished SDNY, per report in NY Law Journal, referring to the "changes" made in

transcript. Because the situation [in Zichettello] was brought *"to head"* by the U. S. Attorney's office, it was dealt with. I cited it, in my briefs. **Since, the clerk's personnel were "deciding" my cases in** CA2NY, nothing mattered. All my citations in AP A , did not make any difference to them.

Such "custom, practice and common usage" transcending the "written laws" need not be limited to State Governments only [see *Adickes v Kress & Co.* 398 US 144] but now is shown to be Present, alive and used in the Federal Courts This is a "systemic problem", *Lewis v Casey* 518 US 343. In *Lewis*, supra, this Court observed, at 357, "[I]f once a plaintiff demonstrated harm from one particular inadequacy in government administration, the courts were authorised to remedy *all* inadequacies in that administration.". I cited *Lewis supra* in my briefs. Who was reading the briefs ? No one knows. No one cared. No one acted. No one corrected any thing. Everyone dispensed "*injustice*".

Does all of the above mean, that the Judges in CA2NY are turning a *"blind eye and deaf ear"* to all of the above illegal conduct, denying my rights as well as rights of thousands of other Pro Se litigants ? The answer emphatically, MUST BE YES. That is the reason, in AP F, you will see, that, upon my requesting the CA2NY to "take notice of the discrimination and improprieties in Court Administration" the same is DENIED. [AP F 1-2]. This leads us to my Question no 12.

May I suggest, that, these acts of CA2NY employees conduct themselves in "extra-judicial, extra statutory, unconstitutional, deceptive" and outright scandalous manner, with "impunity" that, this Court in *US v Lee* 106 US 196, at 200 observed as "unacceptable." Therefore, I respectfully request this Court to remedy this grave constitutional problem in CA2NY. I have also cited unanimous decision in

Texas & Pacific R. Co. v Rigsby, 241 US 33, 39-40 [1916] that"[A] disregard of the command of the statute is a wrongful act" and pointed to the fact. Time has come to revisit *US v. Shipp.* 214 US 386, 425 (1909) "[I]t was not only in defiance of our mandate but was understood to be such..... by defeating the hearing of the appeal necessarily follows from the defendants' acts..... the administration of justice becomes a mockery." My cases show a complete and successful mockery of every decision since *Marbury, supra* in CA2NY and SDNY.

Similarly the DC statements [relating to "discovery" under FRCP]are totally contradictory to *unanimous opinion* of this Court in *Nelson v Adams USA, Inc.* 529 US 460, 465; vis-a-vis FRCP and due process. Do you believe that the CA2NY should have "heeded by this Court's decisions ?" Or by their active "disregard" of the Laws, Constitution and this Court's decision, are the lower Courts informing all Pro Se litigants that, none of that is for the Pro Se Litigant's benefit ?

For the above reasons alone, the above two questions become paramount reasons, to grant my petition.

Question No. 10, 11, 13, 14: Disregard for Laws, Constitution and this Court's decisions -Meaningless Rituals.: The above discussion must show, that, there is NONE OF THE ORDERS from the Lower Courts, *can be considered reliable*, in both of my cases. For that reason, my claims that, I have been subjected to deprivations of my Fifth Amendment and Thirteenth Amendment protection, are absolutely accurate. All of this is akin to "judicial proceedings which never took place"cf *Smith v Robbins* supra in *Roe v Flores-Ortega* 528 US 470, 483 [Justice O'Connor delivered the opinion for the Court]

Griffin v Illioins 351 US 12 imposes affirmative duty upon the States, to provide "certain" benefits... and *Bounds v Smith* 430 US 817, 829 that, states have certain "affirmative federal constitutional duties". *Marbury*, supra at 177, held that, it is the "duty" of the "Courts" to say what the law is. Even though I provided necessary "cites" in my DC and CA2NY briefs, to enforce the "*invoked*" laws properly, the lower Courts failed in their "duty". Is there any duty upon the Federal Courts or not ?

The DCs and CA2NY have always interpreted the Laws, [whether correctly or NOT, may be subject of appeals and controversies]. In my case, they have simply refused to do so. In this manner, the Courts are coercing me to "WALK ON FIRE ". This is equal to "subjecting" [*Davis v Monroe County Board Of Education* 526 US 629, 645] me to "unusual punishment and imposition of burden upon me, to go to the Supreme Court, where most of the Petitions are declined." This in turn violate my 8th & 13th Amendment [by intentionally taking away my Constitutional rights to Due Process in Federal Judicial Proceedings] protections. This Court in *Clyatt v. United States*.197 US 207,218 [1905] .cf. *Plessy* v. *Ferguson,* 163 U. S. 537, 542 Mr. Justice Brown, delivering the opinion of the court, said: "[S]lavery implies involuntary servitude, a state of bondage;... or at least the control of the labor and services of one man for the benefit of another, and the absence of a legal right to the disposal of his own person, property, and services. I am claiming that the lowers [Federal]Courts took "my statutory rights"away, without my consent. I have been "unusually punished".

In the *Civil Rights Cases* 109 US 3 at 21, Justice Bradley writing for the Court citing various "feudal vassalage" in France, suggested, that , "all inequalities and observances exacted by one man from another, were servitudes, or badges

of slavery". Then suggested, that "such servitudes" if imposed by state law [In US]would be repugnant to the 14th and 13th Amendment of the Constitution.

In fact the same was done in the "underlying state actions" and the DJ writing in her opinion { AP B 8.. That.."Plaintiff has no constitutional right to have motions served in accordance with the deadlines set forth in the CPLR or to have adjournments denied when he opposes them".} DJ did not find any NY Court Case, Law or Constitutional provision to cite and she cited "more wrongfully decided CA2NY and CA7IL, Cases". I have commented enough in Appellate record about such and other remarks. DJ supports violating my 14th and 13th Amendment rights. No wonder the entire decisions and orders of DC and then their "affirmances" by CA2NY are "riddled" with such "convoluted logic".

Under what "criteria" the lower Courts proceedings are to be "termed" "meaningful, full and fair, without hostility and complying with any of the State Or Federal Constitutional provisions or statutes ? In fact, all of them, cumulatively fit the description of "[d]iscrimination, so unjustifiable as to be violative of Due Process" in *Bolling v Sharpe* 347 US 497, 499.

With the "specific" objectives [of saving HYM, that is not "so stated" but must be accepted as the "effect"] the DC proceeded to "corrupt, misstate, misconstrue and contaminate the record and the "truth seeking" process". That is prohibited by *US v Agurs* 427 US 97, 121; and *Rankin v McPherson* [generally] 483 US 378 and that is "willful lawlessness, in the name of enforcement" *US v Payner* 447 US 727,734. On AP B 25. . DC claims that I *"have sued a State Judge"* and P 26 "R&R conspired with state Judge" observations are FALSE. That goes directly to question 13.

I would go a step ahead and say, that "great efforts have been made to save HYM. in both the lower Courts. Consider that the "decisions of March 09, 2001; AP B 15-18 [consisting of 1) denial of Feb 17, 2001 Motion for extension of time, 2) issuance of Mandate] and then terming my Feb. 17, 2001 [extension of time { similar to HYM matter Motion} motion in R&R action, as that of March 09, 2001]; granting it, on Motion Clarification Form, [AP B 51-52]of April 06, 2001 ; to "present the petition for En Banc hearing to the entire Court". Now compare that, with the AP C 48-49 letter, returning the March 23, 2001 Motion, without Filing or even presenting to the Judges [see AP C 49X], the CA2NY either with consent of the Judges or without their knowledge, were *dangling a "carrot"* of En Banc for R&R, before my eyes, while suppressing the HYM matter by issuing a "threat to impose sanction". This is direct, intentional, knowingly committed , unequivocal violation of *18 USCS 1512* . Then the CA2NY personnel retaliated by DENYING motions in both the cases AP B18-20 and AP B 52-53. In fact the denial in R&R AP B 52-53 is dated May 16, 2001 that would be "just two days after Ms Meador received my letter AP C- 64-83, that would have reached on the 14th of May, 2001. That is violation of *18 USCS 1513.*

Questions 3, 4, 8-Frauds and consequences-Statute of Limitations and NYS CPLR 213: Fraud is rampant upon people, in the nation. It is accepted by the Congress, "to be the fact of life" while passing the RICO statutes. The Courts have called them "garden variety fraud" and accepted "so" in *Agency Holding Corp. v Malley Duff & Assoc* 483 US 143, 149; *Sedima S.P.R.L. v Imrex Co* 473 US 479; and in *Supt Of Insurance v Bankers Life Ins. Co.* 404 US 6, fn 7 this Court cited a CA2NY Case *A. T. Brod & Co v Perlow* 375 F 2d 393, 397, that, "[N]ovel or atypical methods should not

provide immunities from the security laws". Which means that "no one should escape, application of laws". But USDC in R&R action refuses to apply laws to the attorney defendants [see AP B 43-highlighted sentence].

In *Shuttlesworth v City Of Birmingham* 382 US 87, the Petitioner therein was "imposed fines and costs of $ 100.00 by the Alabama Courts, in addition to a sentence". This Court accepted the Petition and granted Certiorari and resolved it. In my case, as a result of the Defendants in First action, collectively developing success , "dismissing" my suit for my Automobile Damage and other losses of over $ 5,000.00 and a Potential damages and Punitive Damages against GEICO, the insurance company of "several thousand dollars" deprived me of "substantial property and rights, loss". In the second action the R&R and HI defendants caused actual loss of my property and deprived of my rights and property to the tune of several thousand dollars. Fraud were the reasons in both the cases.

New York State CPLR provides for SIX Years of time, to bring an action for 1) where the time limit is not specified in statute and 2) for fraud [AP A 68-69]. I have consistently asked the lower Courts to apply CPLR 213, for my action and they have refused. In the opinion by Justice Souter, in *North Star Steel Co v Thomas* 515 US 29, 33 discussed the situation of applying State Statutes, very eloquently. In *Miller v California* 415 US 15, 30 this Court observed.."[o]ur nation is simply too big and too diverse for this Court to reasonably expect that such standards could be articulated for all 50 states in a single formulation". Even though the issue there is First Amendment related, since each state has different "statutory scheme" to apply for various issues [an it is done in most instances] and there is simply no reason, to deny those rights to each state. Besides, all people from all

states do not file their claims in One Federal Court to cause any confusion. In *Wilson v Garcia* 471 US 261, 277-278 this Court accepts in Principle that,"all persons shall be accorded the full privileges of citizenship" and it refers to the 14th Amendment issues. In *St. Francis College v Al-Khazaraji* 481 US 604 this Court permitted use of 6 years statute of limitation [contract claim in Pennsylvania], while in *Clark v Jeter*, 486 US 456 [1988] (also a Pennsylvania action)Court found the 6 years statute of limitations for a child's claim, to be "unconstitutional". I do not see that *Clarke* limited to 3 years, because *it was a negligence* claim, from state of Pennsylvania. The Court took, into consideration applicable Pennsylvania law [relating to children] and honored it.

I am asking for use of a valid and constitutional NY State Statute, for application to RICO as well as Civil Rights cases arising out of FRAUDS.

In *Rotella v Woods* 528 US 549, 560, the Court doubt fears of *Rotella* that FRCP Rule 9(b) effectively bar claims like *Rotella,* supra. In my case, no matter how much proof I have produced, under the very signatures of the defendants herein in both the cases, the DC used FRCP 12(b)6 to dismiss my claims. It was difficult for me to "understand the patterns" of the defendant's "misconduct" in order to "fit within the FRCP requirements". My cases are the "perfect" examples, that *Rotella* supra may not have offered. Besides, while in *Rotella supra*, this Court refers to FRCP 11(b)(3) to develop evidence, the decisions and orders of DC-"affirmed by the CA2NY" shows that, all my discoveries have been denied. As stated before DC decision also conflicts with *Nelson, supra.*

At the same time, in AP B 34, the DC acknowledge that I have not "clearly articulated negligence claims". Reasons are simple and ample. My claims [Civil Rights and RICO] in

both actions are for FRAUDS.

I cannot overlook the fact, that, in the SDNY and EDNY Courts of NY, the survivors of Holocaust are pursuing Swiss Banks and German Insurance companies (in the year 2000-2001), with blessings of DJ in both the Court and are receiving "settlements", cumulatively reaching BILLIONS OF DOLLARS. Those actions are filed, well beyond any known "statutes of limitations". Still, they are successfully pursued.

For the above reasons, my questions No. 3, 4,8 and 9 must be answered in favor of this Petitioner and will serve the U. S.

Questions 5,6,7, 9 & 13: Proper Application of Law: Refer to "statutory" interpretations. The DC has specifically ruled. DC has failed the "due process" test, re "FRCP Rules" under *Peguero v US* 526 US 23; *Nelson,* supra and in spite of the holdings of this Court's holding in *Conley v Gibson* 351 US 41, 48; *Maty v Grasselli Chemical Co.* 303 US 197; *O'Donnell v Elgin, Joliet & E. R. Co.*338 US 384,392; insists that this Petitioner did not state facts. AP B 8,9 & 10, as well as AP B 35,39, 40 regarding "statement of facts". The CA2NY Summary order AP B 23, toes the same line.

While claims under 42 USCS 1981 do not require "racial animus" per *Patterson v Mclean Credit Union* 491 US 164, 174-175 ; the DC ruled otherwise. AP B 35. DC refused to recognise, that the defendants influenced and used the State Court Official to accomplish their goal, sufficient, to become state actors, under 42 USCS 1983; *Lugar v Edmondson Oil Co.* 457 US 922; . 42 USCS 1985 is governed by *U. B. of Carpenters v Scott* 463 US 825, 833; *Griffin v Breckenridge* 403 US 88 [and also 13th Amendment issue]; & *Haddle v Garrison* 525 US 121. All of the above go to the Question 13,

Coming to questions No. 5,6,7 & 9.. All of which relate to the RICO application. DC decisions in R&R has been more explicit, in this regard.

AP B 39, 40, 41, 42, 43, 44, 45, 46 statement has direct relation with *highlighted* portion with question 6 & 7. The statutes 18 USCS 1962(d) says a, b, **OR** c. DC holds otherwise. On same page the DC holds that I have not claimed "Commercial Injury" that goes to the question 5. AP B 47.. About "ONE ACT" goes to question 9. I have pleaded that the "Interpretation of statutes of act of Congress must be made by giving "ordinary, contemporary & common meaning" , as determined by this Court in *cf. Walters v Metropolitan Education Enterprises, Inc* 519 US 202, 207 in *Williams v Taylor* 529 US 420, 431. [Unanimous Opinion for the Court, by Justice Kennedy]; *Holloway v US* 516 US 1,6; *Snyder v Harris* 394 UD 332 " [r]ights of the parties neither be abridged nor be expanded; *INS v Cardoza-Fonseca* 480 US 42 "[C]ongress does not intend sub-silentio to enact statutory language it has earlier discarded in favor of other language," at 441 and "[C]ourt should not announce equitable exceptions" in *Hugh Aircraft Co v Jacobson* 525 US 432.

In conclusion, the foregoing must demonstrate, that this matter would be in aid in this Courts Appellate Jurisdiction. This is to respectfully request this Court to grant my Petition, for Writ of Certiorari to the U. S. States Court of Appeals for the Second Circuit.

Spring Valley, NY
August 06, 2001

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